Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ARTHUR J. BELAIRE

Appeal No. 2003-1358
Application No. 09/963,910

ON BRIEF

Before COHEN, STAAB, and BAHR, Administrative Patent Judges.
COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 3. These claims constitute all of the claims in the application.

Appellant's invention pertains to a multi-view side view mirror. A basic understanding of the invention can be derived from a reading of exemplary claim 1, a copy of which appears in the APPENDIX to the main brief (Paper No. 9).

As evidence of anticipation and obviousness, the examiner has applied the documents listed below:

Van Nostrand	4,678,294	Jul. 7, 1987
do Espirito Santo	5,115,352	May 19, 1992

The following rejections are before us for review.

Claims 1 and 2 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Van Nostrand.

Claim 3 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Van Nostrand in view of do Espirito Santo.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 10), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 9 and 11).

Claims 1 and 2 are grouped separately from claim 3 by appellant (main brief, page 4). Thus, we select claims 1 and 3 for review, with claim 2 standing or falling with claim 1.

OPINION

In reaching our conclusion on the anticipation and obviousness issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,[1] and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Anticipation

We sustain the rejection of claim 1 under 35 U.S.C. § 102(b) as being anticipated by Van Nostrand, and likewise sustain the rejection of claim 2 on this same ground since it stands or falls with claim 1 as earlier indicated.

[1] In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under principles of inherency, each and every element of a claimed invention. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997); In re Paulsen, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994); In re Spada, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990); and RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). However, the law of anticipation does not require that the reference teach specifically what an appellant has disclosed and is claiming but only that the claims on appeal "read on" something disclosed in the reference, i.e., all limitations of the claim are found in the reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

Notwithstanding appellant's argument to the contrary (main brief, page 4 and reply brief, pages 1 and 2), and in accord with the examiner's point of view (answer, pages 4 through 6), it is very apparent to us that claim 1 reads on and, therefore, is anticipated by the Van Nostrand teaching. More specifically, Van

Nostrand (Fig. 1) teaches an upper mirror 4 and a lower mirror 3, and a pivotal connection means (pivot point adjustment screws 15, 16, and 17; column 3, lines 33 through 44), as set forth in claim 1.

Obviousness

We sustain the rejection of claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Van Nostrand in view of do Espirito Santo.

In applying the test for obviousness,[2] we reach the conclusion that it would have been obvious to one having ordinary skill in the art, from a combined consideration of the applied patents, to replace the mirror adjustment screws (15, 16, 17 and 12, 13, 14) for each of the mirrors (3, 4) of Van Nostrand (Fig. 1 through 3) with a drive motor adjustment arrangement. From our perspective, one having ordinary skill in the art would have

[2] The test for obviousness is what the combined teachings of references would have suggested to one of ordinary skill in the art. See In re Young, 927 F.2d 588, 591, 18 USPQ2d 1089, 1091 (Fed. Cir. 1991) and In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

certainly been motivated to make the proposed modification simply for the reason of taking advantage of an alternative in the art for adjusting mirrors, i.e., electric motors 8 and 9, as disclosed by do Espirito Santo (Fig. 2).

The arguments advanced by appellant (main brief, pages 4 through 8 and reply brief, pages 2 and 3) fail to persuade us of error on the part of the examiner in concluding that the mirror of claim 3 would have been obvious based upon the collective teachings of the applied prior art. We do not share appellant's unsupported assertion (reply brief, page 2) that the applied references are "non-analogous sources." Clearly, each of the examiner's references evidences highly relevant, analogous prior art. As explained above, the applied prior art itself provides the requisite teachings and ample suggestion to support the obviousness rejection, without any reliance upon impermissible hindsight. As a final point, we would simply add that those skilled in this art, at the time of the present invention, would have been expected to utilize a known control unit to operate the respective electric motors taught by do Espirito Santo.

In summary, this panel of the board has sustained the anticipation and obviousness rejections on appeal.

The decision of the examiner is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

IRWIN CHARLES COHEN Administrative Patent Judge	)
LAWRENCE J. STAAB Administrative Patent Judge	) BOARD OF PATENT APPEALS AND INTERFERENCES
JENNIFER D. BAHR Administrative Patent Judge	)

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